IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Bail Appl..No. 6152 of 2007()

[CRIME NO.180/2007 OF KADAKKAL POLICE STATION]

: PETITIONER/ACCUSED

A.DILSHAD, S/O.AMAN,
POONTHRANVILAKOM VEEDU, VETTOOR PO,
VARKALA VILLAGE, CHIRAYINKEEZHU TALUK.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KADAKKAL
POLICE STATION, KOLLAM DISTRICT THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM,.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6152 of 2007

Dated this the 16th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner is the seventh accused in a crime registered for offences punishable inter alia under Sections 120B and 364 I.P.C. The first accused allegedly had disputes with the de facto complainant. He had entered into a conspiracy along with others including the petitioner herein. The de facto complainant was allegedly taken away in an attempt to coerce him to part with money. I have considered facts in detail in the application for regular bail filed by some of the co-accused. The petitioner is alleged to be one of the conspirators and he allegedly had played an active role in the abduction and illegal detention of the de facto complainant. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is not the real accused arrayed as the seventh accused. Another Dilshad is really made an accused. That Dilshad happens to be a very influential person belonging to the

ruling party and therefore the petitioner, who bears the same name is unnecessarily and unfortunately dragged into the controversy. The petitioner does not deserve to endure the trauma of arrest and detention. He shall co-operate with the investigating officers. Appropriate conditions may be imposed. The petitioner may be saved of the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are serious. There is absolutely no reason to assume that the petitioner has been substituted for a real accused in the anxiety to save the real accused from this prosecution. The confession of the arrested accused as well as other materials collected clearly point to the complicity of the petitioner. The petitioner is the one who is arrayed as the seventh accused. Satisfactory inputs are available to array the seventh accused. The contention of the petitioner that he is not the seventh accused and that no materials have been collected against the seventh accused is not justified at all, submits the learned Public Prosecutor. The case diary has already been perused by me. The same has been perused by me today also.

4. Having considered all the relevant circumstances, I am not persuaded to agree that this is a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked. This, I am satisfied, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007